

*Grievance procedure
filed by NEA rep. instead
of applying, per contract
language.*

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

BERLIN EDUCATION ASSOCIATION,	:	
Affiliated with NHEA/NEA	:	
	:	
	:	
Complainant	:	CASE NO. <u>T-0201:1</u>
	:	
and	:	
	:	
SCHOOL BOARD, BERLIN, NEW HAMPSHIRE	:	DECISION NO. <u>780032</u>
	:	
Respondent	:	
	:	

APPEARANCES

Representing the Berlin Education Association:

John Fessenden, UniServ Director, NHEA/NEA
Stephen P. Michaud, President, BEA
Gerard Poulin, BEA

Representing the School Board:

William B. Kingston, Metzler Associates
Lawrence Dwyer, Superintendent
Raymond Birt, Principal

BACKGROUND

On March 17, 1978, John Fessenden, UniServ Director, NHEA/NEA, on behalf of the Berlin Education Association filed improper practice charges against the Berlin Board of Education alleging violation of RSA 273-A:5, I(h) for failure to follow the grievance procedure in accordance with the existing agreement by and between the parties.

The Public Employer in its answer stated that the grievance was misfiled and not in the procedure outlined in the contract. The contract, they stated, clearly prohibited anyone other than the grievant from initiating a grievance, and in this particular case, the grievance form was signed by the President of the Education Association on behalf of two former employees.

Hearing on the charge was held in the Board's office on Wednesday, June 7, 1978.

Representative for the School Board, William Kingston, questioned whether or not the NHEA/NEA, acting as Counsel, could under its own signature initiate an unfair labor practice complaint when the BEA, a grandfathered unit in accordance with the existing contract, is the sole and exclusive representative for the teachers in the Berlin School District. Further that the preamble in the agreement specifically states:

"It is expressly understood by the parties that the NHEA and/or the NEA are not parties to this agreement."

The Board argued that the specific intent of the language of the contract was that the Association, or any of its agents, could not write a grievance. Grievances had to come from the teachers themselves who were grieved; employees could only grieve on their own behalf.

FINDINGS OF FACT

1. Article 16 of the existing agreement defines a "grievance" as a complaint by a teacher that there has been to him/her a personal loss or injury as a result of a violation or misapplication of any of the provisions of the agreement.
2. On March 15, 1977, an employee of the School District, Stephen P. Michaud filed a grievance with the School Board charging failure on the part of the school to post the opening of positions as defined in Article 14 of the Master Agreement, and claiming loss of job protection from the misapplication of the contract.
3. Representative for the School Board did stipulate that the Board did not follow the grievance procedure.
4. The School Board predetermined that the matter was not a grievance without going through the procedures outlined in the Master Agreement.
- 4a. To deny access to the contractual grievance procedure because of highly questionable technicalities seems to defy the intent of the objectives of 273-A "The legislature declares that it is the policy of the state to foster harmonious and cooperative relations between public employers and their employees and to protect the public by encouraging the orderly and uninterrupted operation of government."
5. As testified at the hearing, the School Board's willingness to hear the case as a complaint, but not as a grievance, would indicate that both sides admit to an existing problem. Both seemed to desire the resolution but could not agree on the method to be utilized. The contract between the parties speaks to this very question in Article 16 titled, "Grievance Procedure", which indicates that the parties to the contract recognized that problems of this nature could arise during the term of the contract.
6. Stephen P. Michaud, a qualified teacher under the contract did in fact file a grievance on behalf of himself and others and the Superintendent did fail, as did the School Board, to process the grievance step by step as outlined in the contract.
7. The School Board by its representative admitted failure to post position vacancies as charged in the unfair practice case before this Board.
8. The relief sought by the petitioner was:
 1. A letter of reprimand to be placed in the file of Raymond Birt.

2. Katherine Pasquale and Phoebe Eastman to be given notice of any future openings in the School District and to be given first consideration for any position that they are qualified to teach.
3. A letter to the Berlin Education Association stating that should a violation of Article 14 occur and that Raymond Birt be found guilty of that violation, that said Raymond Birt be immediately dismissed from his position. It is further requested that the Public Employee Labor Relations Board take whatever action they may deem appropriate as a result of the Berlin Board of Education failure to comply with the collective bargaining agreement.

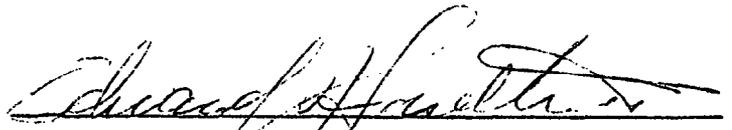
DECISION AND ORDER

- #1 The grievance filed on March 15, 1978 signed by Stephen P. Michaud constitutes a valid filing under the contract.
- #2 A member of a bargaining unit may choose to be represented by someone other than him/herself.

After considering all the testimony, exhibits and post-hearing briefs, the relief requested in the petition is denied.

The Berlin School Board is hereby ordered to process Stephen P. Michaud's grievance in accordance with Article 16 of the contract.

The Berlin School Board is found to have committed an improper practice under 273-A:5, I(h) in that they failed to properly process grievance filed by Stephen P. Michaud.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 16th day of August, 1978

By Unanimous vote of the Board. Present and voting Chairman Edward Haseltine,
Members Richard H. Cummings and Joseph B. Moriarty